

IN THE MATTER OF MERCHANT SEAMAN'S DOCUMENT NO. Z-1131957 AND ALL
Issued to: James R. MOYLES

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1511

James R. MOYLES

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 18 November 1964, an Examiner of the United States Coast Guard at Houston, Texas suspended Appellant's seaman documents for two months outright plus four months on twelve months' probation upon finding him guilty of misconduct. The offenses alleged in the three specifications were proved by evidence that while serving as a deck maintenance man on board the United States SS PENN VANGUARD under authority of the document above described, on 25 September 1964, at sea, Appellant failed to perform his duties on the 1600 to 2000 watch due to intoxication; he refused to obey the lawful orders of the Master and Chief Mate to leave the ship's navigation bridge; Appellant assaulted and battered the Chief Mate while he was on watch.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence copies of entries in the ship's Official Logbook, extracts from the Shipping Articles, and the testimony of the Chief Mate. The Mate testified that the Boatswain said he told Appellant at 1600 he was relieved of his watch because he was drunk; the Boatswain stood the 1600 to 2000 watch for Appellant; at 1720, Appellant came to the bridge intoxicated, refused to obey the Chief Mates's and then the Master's orders to leave the bridge; and, at this time, Appellant struck the Chief Mate on the face, and tore his clothing when the Chief Mated attempted to force Appellant to leave the bridge; Appellant was eventually subdued and handcuffed to a rail at 1800 after the Chief Mate obtained assistance by sounding the general alarm; Appellant freed himself but went to his quarters when ordered to do so by the Master.

Appellant testified that he had no recollection of anything that happened between the time he went to sleep after his 0400 to 0800 watch on 25 September and when he became aware of the fact that he was handcuffed to the rail. Counsel argued that this lapse of memory was due to a head injury received on the ship on 31 July 1964.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and three specifications had been proved by the testimony of the Chief Mate. The Examiner then entered the order of suspension mentioned above.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that Appellant was not drunk. This misconduct occurred during a blackout caused by brain damage from an earlier blow on the head. The Investigating Officer refused to grant a request for a delay of the hearing until Appellant saw a doctor. After the hearing on 22 October, Appellant was not found fit for duty until 23 December.

(Clinical records of Appellant's treatment at the U. S. Public Health Service Hospital at Staten Island were submitted on appeal. They indicate that as a result of Appellant's complaint of persisted headaches since a head injury in July 1964, he was treated as an outpatient from 26 October until found fit for duty on 23 December. Tests failed to disclose the cause of the headaches.)

The case should be dismissed since this appeal would not be necessary if Appellant had been allowed to see a doctor before the hearing.

OPINION

At the hearing, Appellant was represented by counsel who had every opportunity to request a continuance for Appellant to be examined. Not effort to have the Examiner order Appellant to be examined at the completion of the government's case. Hence, any failure by the Investigating Officer to grand a delay in order for Appellant to see a physician prior to the hearing was not prejudicial to Appellant and constitutes no basis for dismissal.

Although there is evidence that Appellant suffered a small cut on the head when struck by a pulley on 31 July 1964, there is no evidence to support Appellant's claim that this blow caused brain damage which resulted in a blackout on 25 September or any other date. The medical records referred to above do not in any way substantiate this contention. Appellant testified that, after examination and an X ray in August at Kurachi, the physician told Appellant there was nothing wrong with his head (R. 48).

On the other hand, the Chief Mate's testimony, which was accepted by the Examiner, indicates that Appellant's loss of memory was the result of voluntary intoxication. In addition to testifying that the Boatswain said Appellant was drunk and that his appearance conveyed such an impression when he came to the bridge at 1720, the Chief Mate stated very definitely that he smelled alcohol on Appellant's breath (R. 22, 27) and his eyes were bloodshot (R. 38). This constitutes substantial evidence that these offenses were committed while Appellant was intoxicated rather than while suffering from brain damage over which Appellant had no control.

The order issued by the Examiner would be considered very lenient under ordinary circumstances. Mitigating matters in this case are the fact that Appellant has no prior record, he was an excellent seaman during the voyage except for this single incident, and the discipline on the ship relative to drinking intoxicants was very loose.

ORDER

The order of the Examiner dated at Houston, Texas, on 18 November 1964, is AFFIRMED.

W. D. Shields
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 21st day of July 1965.

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